District Court of the United States

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA

vs.

READING COMPANY, ET AL.

PLAN, AND COUNTER-PROPOSAL OF THE UNITED STATES.

FEBRUARY 14 1921.

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In the District Court of the United States, for the Eastern District of Pennsylvania.

The United States of America, Petitioner,

vs.

Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, The Lehigh Coal & Navigation Company, Wilmington & Northern Railroad Company, Lehigh & Hudson River Railway Company, Lehigh & New England Railroad Company, George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. duPont, Daniel Willard, Henry P. McKean and Samuel Dickson, Defendants.

In pursuance of the decree of mandate of this Court entered October 8th, 1920, defendants, Reading Company, Philadelphia and Reading Railway Company, and The Philadelphia & Reading Coal & Iron Company, respectfully submit the following plan:—

1. The Reading Company will assume the $96,524,000 General Mortgage 4% bonds, which are a joint obligation of the Reading Company and The Philadelphia & Reading Coal & Iron Company (hereinafter called the Coal Company), and will agree to save the Coal Company and its property harmless therefrom.

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2. The Coal Company will pay to the Reading Company $10,000,000 in cash, or current assets at market value, and $25,000,000 in 4% mortgage bonds of the Coal Company. The mortgage under which they are to be issued may contain provision for the issue thereunder of additional bonds to provide for additions, betterments and improvements to a limited amount, to be determined by the Reading Company and the Coal Company prior to the creation of the mortgage, and shall contain provision for a proper sinking fund for the retirement of bonds issued thereunder. The $25,000,000 bonds issued by the Coal Company to the Reading Company shall mature on January 1, 1997, the same date as the General Mortgage bonds. The bonds issued by the Coal Company shall be subject to redemption at par and accrued interest on any semi-annual interest date as a whole but not in part, except out of the moneys in the sinking fund.

3. Except as otherwise herein expressly provided, general releases of all claims and liabilities as between the Reading Company and the Coal Company, including the claim of approximately $70,000,000 carried on the books of the Reading Company as an asset and on the books of the Coal Company as a liability, will be exchanged.

4. The Reading Company will agree that it will obtain the release of the coal property from the lien of the General Mortgage and the discharge of the Coal Company from liability on the General Mortgage bonds, provided such release and discharge can be secured by payment by the Reading Company to the bondholders of a premium not exceeding 10% upon the par value of the outstanding General Mortgage bonds. Such release and payment will be made from time to time as the acquiescence of the several bondholders shall be given. The Reading Company will make payment of said premium on the order of the committee to be formed in the interest of the bondholders. Said committee will call for the deposit of bonds and will be authorized by the depositors to return to them their bonds

stamped as assenting to the release and discharge above mentioned, or to return to them, in the discretion of the committee, refunding and improvement mortgage bonds of the Reading Company hereinafter described for an equal principal amount and bearing 4% interest. Though the committee will order payment of the premium from time to time as the bonds are deposited, it will, in the first instance, cause to be issued depository receipts for the General Mortgage bonds and will retain the General Mortgage bonds until it shall have determined that a sufficient percentage of bonds has been deposited to declare in effect the plan of exchange for refunding and improvement mortgage bonds, or that in its judgment it is improbable that a sufficient amount of bonds will be so deposited. Upon such determination it shall deliver to the holders of the depository receipts the refunding and improvement mortgage bonds or General Mortgage bonds stamped as aforesaid, as the case may be. The depository will collect and pay out the interest on the deposited bonds pending the determination of the committee as aforesaid.

5. It is assumed that the Attorney General will ask the Court to direct the release of the stock of the Coal Company from the lien of the General Mortgage on such terms as the Court may fix. If practicable the Coal Company will consolidate with Delaware Coal Company, of which it owns the entire capital stock, and the consolidated company will issue stock without par value to the Reading Company. If that is not practicable, a new corporation will be created to acquire from the Reading Company the stock of the Coal Company, or the interest of the Reading Company therein, and such new corporation will issue no par value stock. The number of shares to be issued of the consolidated Coal Company or of such new corporation may be 1,400,000.

Such no par value stock will be sold to the stockholders of the Reading Company, preferred and common, share and share alike, for $5,600,000., or $2.00 for each share of Reading Stock. It is proposed to carry out this sale, in accordance with the precedent established by the Union Pa-

cific-Southern Pacific case, by distributing to Reading stockholders assignable certificates of interest in the Coal Company stock exchangeable for such stock only when accompanied by an affidavit that the holder is not the owner of any stock of Reading Company. Any further steps, which may be deemed necessary by the Court, will be taken to the end that an independent board and management to be approved by it will be maintained for the Coal Company, so that the independence of this company need not await the necessarily gradual process of the distribution of the stock of the Coal Company among persons not holders of stock in the Reading Company.

6. The Reading Company will merge the Philadelphia & Reading Railway Company under the authority contained in the present charter of the Reading Company, and will subject the Railway property to the direct lien of the General Mortgage. The name of the Reading Company, after merger, will not be changed. The Reading Company will accept the Pennsylvania Constitution of 1874, and it will proceed under the Act of 1856 to surrender those of its powers which are inappropriate for a railroad corporation of Pennsylvania. Thus the Reading Company will be in all respects subject to the regulation of State and Federal authorities as a common carrier, and the relation of the Reading Company, as a specially chartered holding company, to the Philadelphia and Reading Railway Company will be terminated.

7. If and whenever the General Mortgage bondholders' committee shall determine to declare the plan of exchange effective, the Reading Company shall execute a refunding and improvement mortgage, which shall constitute a direct lien upon all the railroads, railroad property, railroad equipment and railroad stocks and bonds then owned by the Reading Company or thereafter acquired by means of bonds issued thereunder. Deposited General Mortgage bonds will be kept alive under said refunding and improvement mortgage until the General Mortgage is released.

The refunding and improvement mortgage will contain appropriate provision for the reservation of bonds to refund outstanding General Mortgage bonds and other prior lien bonds or obligations. It will be an open mortgage in modern form with appropriate provision for the issue of additional bonds for the acquisition of new property and for additions, betterments and improvements to the mortgaged property.

8. The Court will be asked to defer the actual sale of the stock held by the Reading Company in the Central Railroad of New Jersey pending the grouping of railroads by the Interstate Commerce Commission under the Transportation Act, but subject to the further order of the Court. It is assumed that the Attorney General will ask the Court to make an order assuring the voting of the stock pending such sale in the manner approved by the Court. A detailed plan for the prompt disposition of the stock of the Lehigh and Wilkes-Barre Coal Company by the Central Railroad of New Jersey has been submitted separately.

Wm. Clarke Mason,
R. C. Leffingwell,
Chas. Heebner,
Of Counsel.

Dated, February 14th, 1921.

In the District Court of the United States for the Eastern District of Pennsylvania.

United States of America

vs.

Reading Company, et al.

No. 1095.

COUNTER PROPOSAL BY THE UNITED STATES TO PARAGRAPH EIGHT OF THE DEFENDANTS' PLAN.

Comes now the United States by Frank K. Nebeker, Assistant to the Attorney General, and Abram F. Myers, Special Assistant to the Attorney General, and respectfully represents unto the Court that the provision in the plans submitted by the defendants for the placing in the hands of a trustee of Reading Company's interest in the stock of the Central Railroad Company of New Jersey, pending the working out of a plan for the re-grouping of railroads by the Interstate Commerce Commission under the Transportation Act of 1920, is not a satisfactory compliance with the requirements of the Supreme Court.

Complying with the requirement in the interlocutory decree that the United States shall embody its suggestions in reference to the defendants' plan in a plan of its own, the United States respectfully suggests that the following paragraphs be submitted for paragraph eight of the defendants' plan:—

"Reading Company shall, with all due diligence, offer for sale at a reasonable price and upon reasonable terms the stock of the Central Railroad Company of New Jersey now owned by it for a period of years. If at the expiration of such period a sale of such stock has not been made, then, upon application of the Attorney General, the Court may decree a sale at public auction at a price not less than a minimum price to be agreed upon between the Reading Company and the Attorney General. During this period Reading Company shall accept any offer by a reasonable purchaser made in good faith and at a reasonable price and in the event of any disagreement between an intending purchaser, who has complied with the foregoing provisions, and the Reading Company, then the matter shall be referred to the Attorney General for his advice and if the parties shall still be at a disagreement, then any party (Reading Company, the United States, or the intending purchaser) may bring the matter to the attention of the Court for its decision. A purchaser under this provision must be approved by the Attorney General, and, if a railroad company, shall apply to the Interstate Commerce Commission for its authority to make such purchase under paragraphs two and three of Section 407 of the Transportation Act of 1920.

"For the purposes of carrying out such a provision, jurisdiction of the case shall be retained by the Court."

The suggestions of the Government in reference to the other provisions of defendants' plan, which suggestions relate only to matters of detail, are embodied in the memorandum attached hereto.

FRANK K. NEBEKER,
Assistant to the Attorney General.
A. F. MYERS,
Special Assistant to the Attorney General.

In the District Court of the United States for the Eastern District of Pennsylvania.

The United States of America,

vs.

Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, et al.

PLAN FOR THE DISPOSAL BY THE CENTRAL RAILROAD COMPANY OF NEW JERSEY OF ALL THE STOCK OF THE LEHIGH & WILKES-BARRE COAL COMPANY NOW OWNED OR IN ANY MANNER CONTROLLED BY IT. FRAMED IN SUCH FORM AS TO BE EMBODIED IN THE DECREE.

The Central Railroad Company of New Jersey shall dispose of all its capital stock of The Lehigh & Wilkes-Barre Coal Company now owned by it to persons or corporations who are not its own stockholders or stockholders in either Reading Company, Philadelphia & Reading Railway Company or The Philadelphia & Reading Coal & Iron Company, and who previous to or at the time of purchase shall qualify as purchasers by a duly executed affidavit in one of the forms hereto annexed.

The affidavit in the case of an individual purchasing in his own right shall be substantially in the form hereto annexed, marked "Form A."

If the purchaser is a corporation or a joint-stock company, the affidavit shall be executed by its president, vice president, secretary or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substantially in the form hereto annexed, marked "Form B."

If the purchaser is a partnership the affidavit shall be executed by one of the partners and shall be substantially in the form hereto annexed, marked "Form C."

All of the said stock shall be disposed of within six months after entry of this decree, or previous to any other later date which may be fixed by the Court. Stock may be disposed of in such manner and upon such terms as The Central Railroad Company of New Jersey may determine; provided, however, that it shall only be acquired by persons or corporations qualified to receive it under the terms of the said affidavits. And provided further, not less than twenty per cent. shall be paid in cash at the time of its disposition by persons or corporations acquiring it.

On or before the date fixed by the Court before which the disposal of such stock shall be completed The Central Railroad Company of New Jersey shall file or cause to be filed with the clerk of this Court a statement containing the names of the persons, corporations or partnerships to whom such stock has been disposed of and the number of shares acquired by each, which statement shall be annexed to the said affidavits.

Should all of the said stock not be disposed of before the expiration of six months after entry of this decree or previous to any later date which may be fixed by the Court, the remainder shall be then transferred to the Central Union Trust Company of New York (hereinafter called the "Trustee") as the custodian and depository of the Court, subject to the provisions of this decree and to the further orders and decrees of the Court herein. Such stock shall be registered in the name of the Trustee on the books

of The Lehigh & Wilkes-Barre Coal Company and certificates therefor delivered to the Trustee.

Such stock, together with any dividends received by the Trustee thereon, shall be transferred by the Trustee from time to time to persons to whom The Central Railroad Company of New Jersey may have sold the same and who are qualified to receive it under the terms of this decree.

Pending transfer the Trustee shall receive all dividends declared on any stock standing in its name and may vote thereon at any stockholders' meeting.

The said Trustee, having declared its submission to the jurisdiction of this Court for the purpose of carrying out this provision of this decree and having entered its appearance herein by counsel, is made a party hereto.

The Central Railroad Company of New Jersey shall from time to time, upon the request of the Attorney General of the United States, furnish him with any information which he may require relating to the carrying out of this decree.

In order to enable The Central Railroad Company of New Jersey to dispose of the said stock of The Lehigh & Wilkes-Barre Coal Company to the greatest advantage without any accumulated dividends, the injunction heretofore granted in this suit shall be modified so as to permit The Central Railroad Company of New Jersey to collect and receive any dividends which have been or may be declared upon the stock of The Lehigh & Wilkes-Barre Coal Company previous to disposition thereof.

ROBERT W. DEFOREST,
Of Counsel.

FEBRUARY 14, 1921.

FORM A.

STATE OF
COUNTY OF } *ss.*

, being duly sworn, deposes and says: That deponent is the *bona fide* purchaser in his own proper right of a certificate or certificates for
shares of the capital stock of The Lehigh & Wilkes-Barre Coal Company, transferred to him by The Central Railroad Company of New Jersey under a decree entered on the 8th day of October, 1920, in the suit of The United States of America *vs.* Reading Company, Philadelphia and Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, *et al.*, and makes this affidavit at or previous to the time of the issuance to him of such certificate or certificates for the purpose of evidencing his right to receive the same. That deponent does not own in his (or her) own right any shares of the capital stock of The Central Railroad Company of New Jersey, Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, whether registered in his (or her) own name on the books of said companies or any of them or registered in the names of others for deponent's use and benefit. That deponent in receiving this said certificate or certificates is not acting for or on behalf of any stockholder of The Central Railroad Company of New Jersey or of any other of the said Companies or in concert, agreement or understanding with any other person, firm or corporation for the control of The Lehigh & Wilkes-Barre Coal Company in the interest of The Central Railroad Company of New Jersey or of any other of the said companies, but is acting in his own behalf in good faith.

Sworn to before me, this day , 1921.

FORM B.

STATE OF
COUNTY OF } *ss.*

, being duly sworn, deposes and says: That he is of , a corporation (or a joint-stock company). That said corporation is the *bona fide* purchaser on its own proper right of a certificate or certificates for shares of the capital stock of The Lehigh & Wilkes-Barre Coal Company, transferred to it by The Central Railroad Company of New Jersey under a decree entered on the 8th day of October, 1920, in the suit of The United States of America *vs.* Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, *et al.*, and makes this affidavit at or previous to the time of the issuance to it of such certificate or certificates for the purpose of evidencing its right to receive the same. That corporation does not own in its own right any shares of the capital stock of The Central Railroad Company of New Jersey, Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, whether registered in its own name on the books of said companies or any of them or registered in the names of others for its use and benefit. That said corporation in receiving the said certificate or certificates is not acting for or on behalf of any stockholder of The Central Railroad Company of New Jersey or of any other of the said companies or in concert, agreement or understanding with any other person, firm or corporation for the control of The Lehigh & Wilkes-Barre Coal Company in the interest of The Central Railroad Company of New Jersey or of any other of the said companies, but is acting in its own behalf in good faith.

Sworn to before me, this day of , 1921.

FORM C.

STATE OF
COUNTY OF } *ss.*

, being duly sworn, deposes and says: That he is a member of the partnership of (hereinafter called the "Partnership"). That said Partnership are the *bona fide* purchasers in their own proper right of a certificate or certificates for shares of the capital stock of The Lehigh & Wilkes-Barre Coal Company, transferred to them by The Central Railroad Company of New Jersey under a decree entered on the 8th day of October, 1920, in the suit of The United States of America *vs.* Reading Company, Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, *et al.*, and makes this affidavit at or previous to the time of the issuance to them of such certificate or certificates for the purpose of evidencing their right to receive the same. That said partnership does not own in their own right any shares of the capital stock of The Central Railroad Company of New Jersey, Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, whether registered in their own name on the books of said companies or any of them or registered in the names of others for their use and benefit. That said partnership in receiving the said certificate or certificates is not acting for or on behalf of any stockholder of The Central Railroad Company of New Jersey or of any other of the said companies or in concert, agreement or understanding with any other person, firm or corporation for the control of The Lehigh & Wilkes-Barre Coal Company in the interest of The Central Railroad Company of New Jersey or of any other of the said companies, but is acting in their own behalf in good faith.

Sworn to before me, this day of , 1921.

MEMORANDUM OF UNITED STATES *IN RE.*

Disposition by Central Railroad Company of Stock of Lehigh & Wilkes-Barre Coal Company.

The Central Railroad Company having already disposed of the bonds of the Lehigh & Wilkes-Barre Coal Company, the proposal to dispose of the stock in accordance with the Union Pacific precedent is satisfactory.

Respectfully submitted,

FRANK K. NEBEKER,
Assistant to the Attorney General.
A. F. MYERS,
Special Assistant to the Attorney General.

February 14th, 1921.

District Court of the United States

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA

vs.

READING COMPANY, ET AL.

MODIFIED PLAN.

MAY 12, 1921.

In the District Court of the United States for the Eastern District of Pennsylvania.

The United States of America, Petitioner,

vs.

Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, The Lehigh Coal & Navigation Company, Wilmington & Northern Railroad Company, Lehigh & Hudson River Railway Company, Lehigh & New England Railroad Company, George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. duPont, Daniel Willard, Henry P. McKean and Samuel Dickson, Defendants.

In pursuance of the decree of mandate of this Court entered October 8th, 1920, defendants, Reading Company, Philadelphia and Reading Railway Company, and The Philadelphia & Reading Coal & Iron Company, respectfully submit the following plan:—

1. The Reading Company will assume the $96,524,000 General Mortgage 4% bonds, which are a joint obligation of the Reading Company and The Philadelphia & Reading Coal & Iron Company (hereinafter called the Coal Company), and will agree to save the Coal Company and its property harmless therefrom.

2. The Coal Company will pay to the Reading Company $10,000,000 in cash, or current assets at market value, and $25,000,000 in 4% mortgage bonds of the Coal Company. The mortgage under which they are to be issued may contain provision for the issue thereunder of additional bonds to provide for additions, betterments and improvements to a limited amount, to be determined by the Reading Company and the Coal Company prior to the creation of the mortgage, and shall contain provision for a proper sinking fund for the retirement of bonds issued thereunder. The $25,000,000 bonds issued by the Coal Company to the Reading Company shall mature on January 1, 1997, the same date as the General Mortgage bonds. The bonds issued by the Coal Company shall be subject to redemption at par and accrued interest on any semi-annual interest date as a whole but not in part, except out of the moneys in the sinking fund.

3. Except as otherwise herein expressly provided, general releases of all claims and liabilities as between the Reading Company and the Coal Company, including the claim of approximately $70,000,000 carried on the books of the Reading Company as an asset and on the books of the Coal Company as a liability, will be exchanged.

4. *The Reading Company will agree with the Coal Company that, at or before the maturity of the General Mortgage bonds, it will obtain the release of the Coal Company's property from the lien of the General Mortgage and the discharge of the Coal Company from liability on the General Mortgage bonds.*

5. *If the Court so orders, the Reading Company will, subject to the lien of the General Mortgage, sell, assign and transfer all its right, title and interest in and to the stock of the Coal Company, including the present right to vote and receive dividends thereon, to a new corporation to be formed with appropriate powers, and will agree to save the new corporation and said stock harmless from the lien*

of the General Mortgage, and will agree to obtain, at or before the maturity of the General Mortgage, the release of the stock of the Coal Company from the lien of the General Mortgage and the assignment, transfer and delivery of said stock to the new corporation—all in consideration of the payment by the new corporation to the Reading Company of the sum of $5,600,000, and its agreement to issue its shares to the stockholders of the Reading Company as hereinafter provided. The new corporation will issue 1,400,000 shares of stock without par value. Such no par value stock will be sold by the new corporation to the stockholders of the Reading Company, preferred and common, share and share alike, for $5,600,000, or $2.00 for each share of Reading stock. Provision will be made for the disposition by the Reading Company of any rights to subscribe which may not be availed of by the Reading stockholders within such period as may be fixed by the Reading Company, with the approval of the Court, to the end that the new corporation shall receive the full purchase price of $5,600,000. It is proposed to carry out this sale in accordance with the precedent established by the Union Pacific-Southern Pacific case, by issuing to Reading stockholders, with or without the intervention of a trustee, as may be provided for in the final decree of the Court, assignable certificates of interest in the stock of the new corporation exchangeable for such stock only when accompanied by an affidavit that the holder is not the owner of any stock of the Reading Company.

In addition there will be embodied in the final decree a permanent injunction against the new corporation exercising its voting power on the stock of the Coal Company in such a way as to bring about any new relations between the Coal Company and the Reading Company of the character complained of in the present suit. Any further steps, which may be deemed necessary by the Court, will be taken to the end that an independent board and management to be approved by it will be maintained for the Coal Company, so that the independence of this company need not await

the necessarily gradual process of the distribution of the no par value stock of the new corporation among persons not holders of stock in the Reading Company.

The final decree may provide that if by reason of default on the General Mortgage bonds the Trustee, the Central Union Trust Company, shall exercise the right to vote the stock of Reading Coal Company, it shall so exercise that right as not to bring about unity of management between said Coal Company and Reading Company, and the final decree may further provide that, in the event the Trustee at any time is obliged to sell the stock or properties of Reading Coal Company, it shall dispose of such stock and properties separately from the properties of Reading Company and to different interests.

6. The Reading Company will merge the Philadelphia & Reading Railway Company under the authority contained in the present charter of the Reading Company, and will subject the Railway property to the direct lien of the General Mortgage. The name of the Reading Company, after merger, will not be changed. The Reading Company will accept the Pennsylvania Constitution of 1874, and it will proceed under the Act of 1856 to surrender those of its powers which are inappropriate for a railroad corporation of Pennsylvania. Thus the Reading Company will be in all respects subject to the regulation of State and Federal authorities as a common carrier, and the relation of the Reading Company, as a specially chartered holding company, to the Philadelphia and Reading Railway Company will be terminated.

7. The Court will be asked to defer the actual sale of the stock held by the Reading Company in the Central Railroad of New Jersey pending the grouping of railroads by the Interstate Commerce Commission under the Transportation Act, but subject to the further order of the Court. It is assumed that the Attorney General will ask the Court to make an order assuring the voting of the stock pending such

sale in the manner approved by the Court. A detailed plan for the prompt disposition of the stock of the Lehigh and Wilkes-Barre Coal Company by the Central Railroad of New Jersey has been submitted separately.

READING COMPANY,
By
CHARLES HEEBNER,
General Counsel.

WM. CLARKE MASON,
Solicitor.
R. C. LEFFINGWELL,
Counsel.

Approved on behalf of the United States,

ABRAM F. MYERS,
Special Assistant to the Attorney General.

(The objection of the Attorney General to the provisions of paragraph 7, and also the plan for the sale of the stock of the Lehigh and Wilkes-Barre Coal Company remain the same as in the original plan.)

IN THE

District Court of the United States

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 1095.

THE UNITED STATES OF AMERICA,

vs.

READING COMPANY, et al.,

OPINION

Filed, May 21, 1921.

In the District Court of the United States for the Eastern District of Pennsylvania

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IN EQUITY. No. 1095.

United States,

VS.

Reading Co., et al.

BEFORE BUFFINGTON AND DAVIS, CIRCUIT JUDGES, AND THOMPSON, DISTRICT JUDGE.

BUFFINGTON, J.

On the return to this Court of the mandate of the Supreme Court of the United States directing, *inter alia,* this Court to enter a decree "dissolving the combination of the Reading Company, the Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, existing and maintained through the Reading Company, *with such provisions for the disposition of the shares of stock and bonds and other property of the various com-*

panies, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other, of the Philadelphia and Reading Railroad Company, the Philadelphia and Reading Coal and Iron Company," etc., we called before us the counsel for the United States and the counsel for the Reading Company and directed the latter, in consultation with the former, to formulate a dissolution plan in conformity with the said mandate. In accordance with these directions, and after consultation by all of said counsel from time to time with the Court, a tentative plan was eventually drafted and placed on file in the Clerk's office, for the inspection of all parties concerned. Subsequently, the Court gave a hearing to all parties who desired to be heard and signified its willingness to receive for consideration, petitions to intervene. Numerous parties and representatives of various interest having thus been heard and numerous briefs having been filed showing the views of the parties concerned, the Court was thereby placed in possession of such information as enabled it to determine what parties should be allowed to intervene and also to formulate such questions, issues and objections to the proposed plan as would afford a basis for an enlightening and constructive discussion on the part of all parties of record. Accordingly, this Court, by its order of April 12th, 1921, directed it would on May 2d, 1921, hear arguments on the following questions:—

> "1. (*a*) Whether the sale provided for in paragraph Five of the Reading Plan is such a disposition of the interest of Reading Company in the stock of the Philadelphia & Reading Coal & Iron Company as accomplishes the express purpose of the mandate of the Supreme Court of the United States requiring disposition by Reading Company of such stock because the holding of it has been and would be unlawful: (*b*) and if the mandate is thereby complied with, whether such disposition confers upon any one class of stockholders of Reading Company any benefit to the prejudice of the legal rights of any other class of stockholders.

"2. Whether the stock of the Coal Company should be sold free from the lien of the General Mortgage, or whether a sale of Certicates of Interest therein would be a compliance with the provisions aforesaid of the mandate of the Supreme Court of the United States.

"3. Whether the Reading Company should offer a premium of ten per cent. to the General Mortgage bondholders for release of the Coal Company's property from lien of the mortgage, or whether the requirements of the mandate of the Supreme Court of the United States may be fulfilled by proper injunctive provisions in the decree to be entered in this cause,"

and directed that all parties who desired to be heard should file briefs on April 30, 1921, containing in substance their proposed arguments. Having thus in advance the advantage of the proposed arguments, the Court found on the day set for argument that, due to a modification of the plan agreed to by the Attorney General of the United States, the counsel for the Reading Company and counsel representing certain holders of bonds secured by the General Mortgage of the Reading Company, substantially all of the above questions were disposed of save those arising under sub-division b. of the first question. And this feature, briefly stated, resolved itself into an issue as to the relative rights of the preferred and common stock of the Reading Company, arising out of the disposition of the stock of the Philadelphia & Reading Coal & Iron Company, which latter stock was owned by the Reading Company. The stock of the Philadelphia & Reading Coal & Iron Co. so owned by the Reading Company has a par value of eight millions of dollars. It will be noted that this stock holding by the Reading Company in the Coal Company was decreed by the Supreme Court an unlawful holding and was one as to which the Supreme Court directed this Court to enter a decree "with such provision for the disposition of the shares of stock and bonds and other properties of the various companies, held by the Reading Company, as may be neces-

sary to establish the entire independence from that company and from each other, of the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company," etc. In the plan proposed this order was complied with in that the offending stock was, under proper restrictions and elections, to be disposed of to all the stockholders, both common and preferred, of the Reading Company. By this stockholding passing from the ownership of the Reading Company and being vested in the disassociated ownership of the individual stockholders with such provisions for safeguarding against an unlawful combination between them as is provided in the proposed decree, and as will be hereafter described, it will be seen the letter and spirit of the mandate of the Supreme Court are complied with. The offending stock passes out of the ownership of the unlawful holder and neither it nor the proceeds of its sale can be hereafter used in unlawful combination. In that connection it will be noted that the mandate directs a "disposition of shares of stock and bonds and other property held by the Reading Comany," and in that respect the mandate has been complied with precisely, in that there has been a "disposition" of the stock, it being taken from the Reading Company, and it has not even been distributed by that company, but, treated as an unlawful holding of that company, it is to be taken by the Court and disposed of absolutely by it, by sale through the agency of a corporation created under the provisions of this decree, to such persons as have qualified to lawfully acquire it. The mere circumstance that those persons are stockholders of the Reading Company is attributable to the fact that in the application of equitable principles and without sacrifice of the spirit of the mandate, they compose a class of suitable recipients, in the manner above stated, of the stock which was unlawfully held by the company of which they were stockholders. In other words, if the carrying out of the mandate had necessitated the use of this stock to reduce, for example, the bonded or other indebtedness of the Reading Company, the stockholders of that company, which unlawfully held the stock to be disposed of would have no

claim in law to prevent such disposition. From these considerations it is apparent that whatever this disposition of the stock may be called, it is in no sense an earning of the Reading Company which is to be disposed of by that company as a dividend. It is a taking by the law of an asset of that company, a stock asset, which was and has been owned in specie by Reading Company since the Reading reorganization was formed, and which never was earned or could be earned by the Reading Company itself. Indeed it is now disposed of in substantially the same way as the law would dispose of the property of that company were it being dissolved, and in that connection we deem it proper to say that, under the facts and circumstances before us, the legal question of dividend distribution between different classes of stockholders is not here involved, and on that question we express no present opinion for the simple reason that we are not dividing profits or earnings.

Seeing then that this stock is not an earning of the Reading Company to be distributed as a dividend, but is a part of its capital disposed of in this case to qualifying shareholders, in the manner provided for by the creation of this intermediate corporation, it will be apparent that this decree of equal right to all shareholders, preferred and common alike, to participate in the sale as ultimate purchasers, is based on the general equitable principle that equality is equity and on the corporate right of all shareholders in a Pennsylvania corporation to share equally on a disposition of its assets. We are therefore of opinion that the plan which embodies these equitable principles should be approved and that the claim of the common shareholders to take all of this stock to the exclusion of the preferred stockholders should be denied. And in approving such plan we note that in point of fact the equity of a common participation of all stockholders, preferred and common, has not only the approval of the Government of the United States that has no interest in the controversy, save to see that equity is done to all; of the Reading Company which has no interest save an impartial stewardship for all its share-

holders; and lastly the silently expressed approval of substantially two-thirds of the shares held by common stockholders. This significant and impressive fact cannot but be regarded as highly persuasive of the substantial equity of this plan. Of the 1,400,000 shares of the common stock of the Reading Company, less than one-third object to it. The other two-thirds, having had the opportunity to object and failing to do so, we are warranted in treating as acquiescing in the proposed plan. Indeed, we are justified from one circumstance in concluding from the positive attitude of a hundred thousand of those shares that the remainder are not only passively acquiescing but really actively approving. This particular block of a hundred thousand shares of the common stock is represented by one man who is a trustee of an estate which owns it and he himself is the owner of one-half of such trust estate. He or the estate have no preferred stock whatever. He is also a Director of the Reading Company and as such favored the plan. By his counsel he appeared at the hearing and strongly urged its adoption, asserting his consent to the preferred stock sharing equally with the common in the disposition of the shares of the Coal Company. His contention was that this equal participation by common and preferred stockholders was not only fair, legal and equitable, but that such a proportionate division tended to the welfare of all parties concerned and indeed was a course which made the plan possible. When it is considered that the non-participation of the preferred stockholders in the shares of the Coal Company and the absorption of all the stock by the common shareholders would have benefited this particular hundred thousand shares by a large sum, this Court may rest assured that the proposed plan by its equality works equity. Without entering upon a further discussion of the questions involved, we are of opinion, after careful and matured consideration, that the plan as amended should be approved and we therefore direct the preparation of a formal decree embodying its terms. We deem it proper to add that such decree shall provide for the creation of a

new corporation, to which shall be sold the equities in the shares of the Philadelphia & Reading Coal & Iron Company held by the Reading Company. The rights to purchase the stock of this newly created company will be sold to the preferred and common stockholders of the Reading Company share and share alike. In the creation of such a corporation by this Court's order, we follow a general course pursued in the case of United States *vs.* Du Pont, *et al.,* 188 F. R., 127, and the wisdom of so doing will be seen by an examination of the opinion lately filed in that case, where the purpose of such procedure is fully explained. By the creation of this new corporation by the directions of this Court and by its retention of jurisdiction to enforce this decree as therein provided, the Court can, if such contingency should arise, by its control of this newly formed corporation, control all of its stockholders and prevent such stock from ever being used to thwart the decree made in pursuance of the plan.

The paragraph of the original Reading Plan numbered eight, which is paragraph numbered seven of the plan as modified in accordance with the agreement between Reading Company and the Attorney General of the United States as of May 12, 1921, contains the only provision in the plan proposed to carry out the mandate of the Supreme Court of the United States which is not agreed to in all of its details by the Reading Company and the Attorney General, and as to this provision of the plan the disagreement relates only to a matter of time.

The section referred to concerns the disposition by the Reading Company of the stock of the Central Railroad of New Jersey owned by the former, and as to this disposition Reading Company and the Attorney General agree, that the stock shall be transferred to one or more trustees, individual or corporate, to be held and voted under the terms of the trust until sold to a purchaser other than the parties defendant in this cause.

Reading Company contends that the spirit and the letter of section five of the Interstate Commerce Act, as amended by the Transportation Act of 1920, justifies its prayer that

the value of this stock of the Central Railroad Company of New Jersey shall not be subjected to possible sacrifice by a sale until the Interstate Commerce Commission shall adopt a consolidation plan which will designate the several railroads of the East with which the Central Railroad Company of New Jersey may be consolidated, so that assurance may be given to a railroad company purchaser of this stock that the holding of it by such purchaser will not be objectionable.

The Attorney General has contended that the stock should be placed in the hands of a trustee or trustees under a decree of this Court which shall direct Reading Company to proceed with all due diligence to offer the same for sale within a definite period, and if at the expiration of such period a purchaser has not been found by Reading Company, then upon the application of the Attorney General the Court may decree a sale of this stock at public auction or in such manner as the Court shall then provide.

The Court is of opinion that because of the provisions of the Transportation Act of 1920 there is presently no prospective purchaser of the Jersey Central stock at a fair price, and so long as the control of the voting power of this stock is taken from Reading Company and lodged with a trustee or trustees, acting under the supervision of this Court, there is full compliance with the mandate of the Supreme Court, which requires that there shall be established entire independence between these two companies, and we are also of opinion there is no good reason why the decree of this Court shall now subject the stock to the possible sacrifice of a forced sale to the detriment not only of the Reading Company but also to the almost equal number of other shareholders of the Jersey Central who are not parties to this record, who have no right to be heard and yet who may be very seriously affected by a decree of this Court ordering at the present time, a forced sale of this majority stock.

The final decree to be entered herein, therefore, will direct the transfer of the stock of the Central Railroad Company of New Jersey, owned by Reading Company, to such trustee or trustees, individual or corporate, as the Court may name,

and shall contain the terms of the trust, which in substance shall provide that the stock shall be voted by the trustee or trustees so that at all times there shall be entire independence of directors and management between Reading Company, as it shall be hereafter merged with Reading Railway Company, and the Central Railroad Company of New Jersey; and that pending a sale of the stock all dividends received by the trustee or trustees upon the same shall be paid to Reading Company or as it shall direct, and that the actual sale of the stock of the Central Railroad Company of New Jersey shall be deferred in view of the possible grouping of railroads by the Interstate Commerce Commission under the Transportation Act of 1920, subject, however, to a provision in the decree that on motion of the United States or other party, or upon the Court's own initiative, that without awaiting such action by the Interstate Commerce Commission, an order may be entered hereafter, for the sale of such stock, if and when it shall appear to the Court that the facts require it, or the situation makes it possible.

It is, therefore, ordered that counsel for the Reading Company, and the Attorney General of the United States, shall prepare and submit to the Court within fifteen days a form of Decree to make effective the mandate of the Supreme Court of the United States in the above entitled cause, in accordance with the provisions of the modified plan agreed to by the Reading Company and the Attorney General of the United States and in conformity with this opinion.

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